

Proposed Community Association Manager Licensing Rules - For Review and Comment Only (F Rules: Professional Standards – Investigations)

F-1) Maintenance and production of records.

- 1) If agreed to by the common interest community and the community association manager or community association management company, to maintain records, the designated community association manager must maintain in a safe and secure manner any and all documents used for the purpose of community association management. Safe and secure manner is defined as reasonable measures taken to minimize the risk of loss, damage, or theft.
 - a) Such records are the property of the common interest community, and the community association manager or community association management company must also maintain copies for the community association management company's own files as set forth in subsection 2 of this rule.
 - b) If the community association manager or community association management company agrees to hold and maintain records for the common interest community, the terms and conditions of such record maintenance and retention shall be in a written agreement between the community association manager or community association management company and the common interest community.
 - c) A community association manager or community association management company who is acting as a manager for the common interest community must turn over all original common interest community documents and management records related to the management services, together with all supporting documentation, to the common interest community or its designee, at no cost or expense to the common interest community, within thirty (30) calendar days after written demand by the common interest community or its designee or within thirty (30) calendar days of the termination of the management agreement with the common interest community, unless otherwise agreed to in writing by both the common interest community and the community association manager or community association management company.
 - d) The community association manager or community association management company must also provide upon written request by the common interest community or its executive board, at no cost, all books and records such that the common interest community can perform its duties and functions pursuant to Colorado law.
 - e) Any subsequent request(s) by a common interest community to a community association manager or community association management company, to produce or copy the common interest community documents and management records related to the management services, together with all supporting documentation, as set forth in subsection C of this rule, to the common interest community or its designee, will allow the community association manager or community association management company to impose a reasonable charge, which may be collected in advance and may cover the costs of labor and material, for the subsequent copies of those association records, provided that the charge may not exceed the estimated cost of production and reproduction of the records.
- 2) A community association manager and community association management company must keep and retain a copy of the common interest community's records maintained and produced during the management of the common interest community for a minimum period of four (4)

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years, at no cost or expense to the common interest community, unless otherwise agreed to in writing by both the common interest community and the community association manager or community association management company. A community association manager and community association management company must produce for inspection by an authorized representative of the Director any document or record as may be reasonably necessary for investigation or audit in the enforcement of § 12-61-1010, C.R.S., and § 12-61-1002(3)(c), C.R.S., and in the enforcement of the rules and regulations of the Director. Failure to submit any such documents or records within the time set by the Director in its notification will be grounds for disciplinary action unless the Director has granted an extension of time for such production.

F-2) Electronic records.

All required records may be maintained in an electronic format. An electronic record means any record generated, communicated, received, or stored by electronic means. Such electronic records must be produced upon request by the Director and must be in a format that has the continued capability to be retrieved and legibly printed. Upon request of the Director, or by the common interest community, or their designee, printed records must be produced.

F-3) Advertising.

A community association manager that advertises the management of services for a common interest community must do so in the name of the licensed community association manager and the community association management company that the licensee is licensed under.

F-4) Licensee must respond to complaint or audit notice in writing.

When a community association manager licensee has received written notification from the Director or a representative of the Director that a complaint has been filed against the community association manager, the licensee has been selected for an audit, or that an audit has identified record keeping or trust account deficiencies, such licensee must submit a written response to the Director. Failure to submit a written answer within the time set by the Director in its notification will be grounds for disciplinary action unless the Director has granted an extension of time for the answer in writing and regardless of the question of whether the underlying complaint warrants further investigation or subsequent action by the Director. The community association manager's written answer must contain the following:

- 1) A complete and specific answer to the factual recitations, allegations or averments made in the complaint filed against the licensee, whether made by a member of the public, on the Director's own motion or by an authorized representative of the Director;
- 2) A complete and specific response to any additional questions, allegations or averments presented in the notification letter;
- 3) Any documents or records requested in the notification letter; and

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- 4) Any further information relative to the complaint that the licensee believes to be relevant or material to the matters addressed in the notification letter.

F-5) Immediate notification of conviction, plea or violation required.

A community association manager must make written notification to the Director pursuant to § 12-61-1010 (j), C.R.S., within 30 calendar days of any of the following:

- 1) A plea of guilty, a plea of nolo contendere or a conviction of any crime identified by § 12-61-1010(i), C.R.S.
- 2) A violation or aiding and abetting in the violation of the Colorado or federal fair housing laws.
- 3) Any disciplinary action taken against a licensee in any other jurisdiction, if the licensee's action(s) would constitute a violation of the community association manager licensing law in Colorado.
- 4) Any practice restrictions as set forth in § 12-61-1010(o) and (p), C.R.S.

F-6) Community association manager maintaining current contact information and all information required for licensing.

Individuals required to be licensed as a community association manager must maintain all current contact information and all information required for licensing, in a manner acceptable to the Director, and include it on the Division of Real Estate database.

- 1) Contact information must include, but is not limited to:
 - a) E-mail address, if applicable;
 - b) Legal first, middle and last names;
 - c) Physical home address;
 - d) Home phone number;
 - e) Physical business address;
 - f) Business phone number; and
 - g) Business name.
- 2) Information required for licensing includes, but is not limited to:
 - a) Errors and omissions insurance provider;
 - b) Errors and omissions policy number;
 - c) Errors and omissions effective and expiration dates;
 - d) Fidelity bond insurance provider;
 - e) Fidelity bond policy number; and
 - f) Fidelity bond effective and expiration dates.
- 3) Individuals required to be licensed as a community association manager must update the Director within five (5) business days of any changes to the information defined in this rule in a manner prescribed by the Director.

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F-7) Contracts, agreements, authorizations and disclosures must be in writing.

- 1) All contracts, agreements, authorizations and disclosures between a community association manager or community association management company and a common interest community must be in writing and must contain the entire agreement of the parties.
- 2) The written agreement between the parties must be legible and clearly specify the terms and conditions of the management services to be performed by the common interest community manager or management company. The agreement must include, but not be limited to, the following:
 - a) Beginning and ending dates of the contract;
 - b) Details of all compensation, fees and charges;
 - c) Cancellation rights of the parties;
 - d) Record retention and distribution policy;
 - e) Errors and omissions insurance coverage;
 - f) Fidelity bond coverage;
 - g) A general description of the records to be kept and the accounting or bookkeeping system to be used; and
 - h) The common interest community manager's license number.
- 3) A community association manager or community association management company must disclose in writing and at no charge, within three (3) business days after a request by an owner in a common interest community, or by a buyer or seller, or their respective agent, who is under contract for the purchase of real property or a unit in a common interest community, all fees and charges that the community association manager or community association management company will charge in connection with the sale, transfer and closing of the real estate or unit in a common interest community.

F-8) Designated manager responsibilities.

To ensure compliance with statutes and Director rules regarding supervision, designated managers have the following responsibilities:

- 1) Maintain all trust accounts and trust account records.
- 2) Provide for a reasonable level of supervision over the licensed activities of all employees.
- 3) Take reasonable steps to ensure that violations of statutes and Director rules do not occur or reoccur.
- 4) Provide adequate supervision of licensed activities for all offices operated by the community association management company.

F-9) Reasonable supervision.

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Pursuant to § 12-61-1010(1)(l), C.R.S., and § 12-61-1003(2), C.R.S., and in addition to requirements of Rule F-8, reasonable supervision of licensees includes, but is not limited to, compliance with the following:

- 1) Maintaining a written policy describing the duties and responsibilities of licensees employed by the community association management company. A copy of the written policy must :
 - a) Be given to, read and signed by each licensee, and
 - b) Be available for inspection, upon request, by any authorized representative of the Director.
- 2) Review of all common interest community contracts, agreements, and authorizations to ensure compliance with all applicable Director rules.
- 3) Ensure all licensed individuals comply with insurance requirements as set forth in Rule D-9 and D-10.
- 4) Nothing in this rule prohibits a designated manager from delegating supervisory authority to other experienced licensees.
 - a) Community association managers who accept supervisory authority from a designated manager will bear responsibility with the designated manager for ensuring compliance with statutes and Director rules by all supervised licensees.
 - b) Any such delegation of authority must be in writing and signed by the licensed community association manager to whom such authority is delegated. A copy of such delegation must be maintained by the designated manager for inspection, upon request, by any authorized representative of the Director.

F-10) Disclose any conflict of interest.

When acting in a licensed capacity, such licensee has a continuing duty to disclose any actual, potential or perceived conflicts of interest that may arise in the course of any activity with regard to the management duties and functions of the common interest community and its executive board. A community association manager must avoid any perceived favoritism or impropriety in carrying out all the duties and obligations with regard to the management of the common interest community and its executive board. A licensee acting as a community association manager has a duty to immediately disclose, in writing, any known conflict of interest that may arise in the selection or use of a business, third party or vendor that provides services pertaining to the management of a common interest community and its executive board. The licensee must disclose any ownership, relationship, financial or familial interest associated with the selection or use of a particular business, third party or vendor. In addition, the community association manager must not accept, directly or indirectly any commission, fee, rebate, discount or any other remuneration or benefit that could be reasonably perceived as conflict with the interests of the common interest community and its executive board, unless it is first disclosed to and consented to in writing by the common interest community and its executive board.

F-11) License revoked, expired, suspended or inactivated.

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Upon suspension, revocation, expiration or inactivation of a community association manager, the licensee is responsible for immediate compliance with the following:

- 1) Cease any activities requiring a license.
- 2) Return the license to the Director. If a designated community association manager, inform all employed licensees of the change in license status and the effect of such change on the license status of those licensees.
- 3) Cease all advertising, including but not limited to, use of signage, newspapers, magazines, Internet, and direct mailings.
- 4) A licensee must inform all common interest communities that they are managing that their community association manager license has expired, or has been suspended, revoked or inactivated, pursuant to § 38-33.3-402, C.R.S., not later than five (5) business days after any such expiration, suspension, revocation or inactivation.
- 5) Inform the common interest community and its executive board of the action taken and the impact that the change in license status will have on the common interest community, if any.
- 6) In the case of a designated manager who is being replaced by a new designated manager, the departing designated manager must properly account for and transfer all entrusted funds to the new designated manager, and return all records to the new designated manager.
- 7) In the case of a designated manager who will not be replaced, and the licensed community association management company will be dissolved, the designated manager is responsible for an accounting of all funds and for making all final disbursements. The community association manager is responsible for maintaining all records for four (4) years.
- 8) Fees earned prior to the suspension, revocation, expiration or inactivation may be retained by the licensee.
- 9) Pursuant to § 38-33.3-402, C.R.S., any agreement by the common interest community to pay a fee for the services of a community association manager or to hold harmless or indemnify the community association manager for any act or omission in the course of providing those services, is void and unenforceable for any period in which the licensee's license is expired, suspended, revoked or inactivated. This would not apply however, if a community association management company had a licensed designated manager or additional licensed community association manager within its company, whose license is in full force and effect, to provide the management services for the association pursuant to a management agreement.